

## **REMARKS**

Claims 26, 28-35, 40-42, 48, 51, and 53 remain for prosecution in the present application. Claims 26, 28-35, 40-42, 48, 51 and 53 are rejected. Reconsideration and allowance of all pending claims are requested in view of the foregoing amendments and the following remarks.

### **Allowable Subject Matter**

The Office Action objected to claim 51 as being allowable if rewritten to overcome the rejection under 35 USC §112. Applicants note that claim 51 was not actually rejected under 35 USC §112 and, in any event, does not include the language objected to in that rejection.

Nonetheless, claim 51 has been amended to more clearly recite the novelty of the actual embodiment intended to be claimed therein. Applicants respectfully request reconsideration and withdrawal of the objection to claim 51, and formal allowance thereof.

### **Objection to the Specification**

Applicants amended the Abstract to include less than 150 words to overcome the objection to the specification. Reconsideration and withdrawal of the objection is respectfully requested.

### **35 USC §112 Rejection**

Claims 26, 28 and 29 have been rejected under 35 USC §112, first paragraph for alleged failure to meet the enablement requirement as to the “at least one internal lug” limitation in claim 26. Applicant has amended the rejected claims per the Examiner’s suggestion. Accordingly, reconsideration and withdrawal of the rejection of claims 26, 28, and 29 under 35 U.S.C. § 112 is respectfully requested.

### **35 USC §103 Claim Rejections**

Independent claim 26 has been rejected under 35 USC §103 as unpatentable over Shah 4,375,858 in view of Akers 5,449,078. Independent claims 30, 40, and 53, and dependent claims 28, 29, 31-34, 41, and 48 have been rejected under 35 USC §103 over Shah in view of Akers as applied to claim 26 and further in view of Swartzbaugh 4,399,920. Dependent claims 35 and 42 have been rejected under 35 USC §103 over Shah in view of Akers and in view of Swartzbaugh as applied to claim 30, and further in view of Puresevic 4,523,688. Reconsideration and withdrawal of the rejections is respectfully requested.

A *prima facie* case of obviousness requires a proposed combination of references to teach or suggest all elements of a rejected claim. See *CFMT, Inc. v. Yieldup Int'l Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003) (citing *In re Royka*, 490 F.2d 981, 985 (CCPA 1974)). In this case, it is clear that there are unreconciled differences between the proposed combination and Applicants' claims and, thus, the Office Action does not set forth a *prima facie* case of obviousness. Also, under MPEP § 2142, if the Examiner's burden to produce a *prima facie* case of obviousness is not satisfied, then an applicant is under no obligation to submit evidence of nonobviousness.

Applicants' independent claims 26, 30, 40, and 53 each recite, in one form or another, *inter alia*, a closure skirt having a stepped profile including a first portion on which at least one internal thread is disposed and a second portion stepped to extend radially outwardly from the first portion and having an outer diameter larger than that of the first portion and an inner diameter larger than that of the first portion.

As shown at right, Shah discloses a container body 19 having a neck portion 16 with threads 20 and holding lugs 15 axially spaced from second ends of the threads 20. Shah discloses that the lugs 15 have cam surfaces 14 and stops 20 (sic) that circumferentially overlap the second ends of the threads 20. Shah also discloses a closure 18 applied to the container body 19 and including a top 23, an outer flange 24, 26, and a flange rim 17 including rectangular locking tabs 11

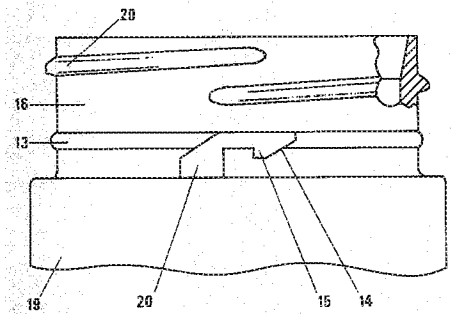


FIGURE 7

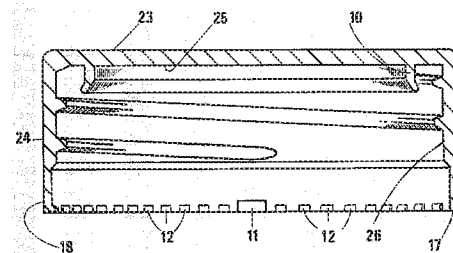


FIGURE 8

corresponding to the holding lugs 15 of the container body 19. The flange rim 17 also includes friction tabs 12 spaced between the locking tabs 11 to provide an audible indicator of locking engagement.

Although Shah discloses the closure 18 having threads 20 disposed on a first portion 26 having a smaller diameter than a second portion 17 that carries tabs, but Shah fails to disclose, *inter alia*, that the second portion 17 itself is stepped to extend radially outwardly from the first portion and has an outer diameter larger than that of the first portion. In fact, the closure 18 of Shah is not stepped and has an outer diameter that is uniform over the first and second portions 26, 17.

Akers does not cure the aforementioned deficiencies of Shah. Akers discloses a container 10 including a camming latch 21 having a cam receiving notch 22, and a cap 11 including a lock lug 20 which is guided into the notch 22 upon rotation of the cap 11 on the container 10.

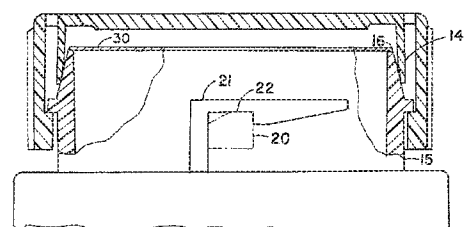


FIG. 6

But Akers fails to disclose, *inter alia*, a closure skirt having a stepped profile including a first portion on which at least one internal thread is disposed and a second portion stepped to extend radially outwardly from the first portion and having an outer diameter larger than that of the first portion and an inner diameter larger than that of the first portion. Instead, like Shah, Akers disclose its cap 11 as having a uniform outer diameter and, thus, does not have a second portion stepped to extend radially outwardly from a first portion.

Swartzbaugh does not remedy the deficiencies of Shah or Akers. Swartzbaugh identifies a problem with child resistant packages, including difficulties in removing a closure from a container. As a solution, Swartzbaugh teaches a closure that

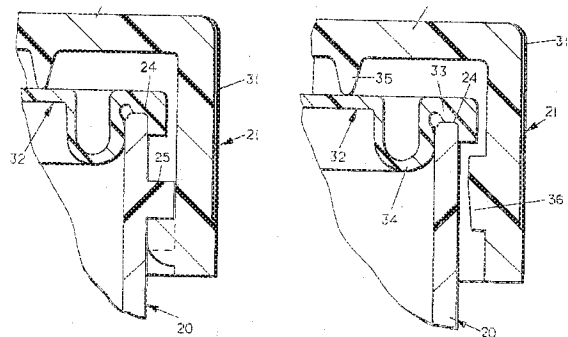


FIG. 2

FIG. 3

is more readily removable from a container. Specifically, with reference to FIGS. 2 and 3 of Swartzbaugh shown above, Swartzbaugh discloses a container 20 having projections 25 with cam surfaces 26 and radial and axial surfaces 27, 28 defining shoulders, and a closure 21 including a skirt 31 having radially inwardly extending rectangular locking lugs 36 and cam lugs 37 with cam surfaces 38. During removal of the closure 21 from the container 20, rotation of the closure 21 causes the cam lugs 37 to engage the projections 25 so as to cam the closure 21 axially upwardly for ready removal of the closure 21 from the container 20.

But Swartzbaugh does not disclose, *inter alia*, a closure skirt having a stepped profile including a first portion on which at least one internal thread is disposed and a second portion stepped to extend radially outwardly from the first portion and having

an outer diameter larger than that of the first portion and an inner diameter larger than that of the first portion. Instead, like Shah and Akers, Swartzbaugh discloses its closure 21 as having a uniform outer diameter and, thus, does not have a second portion stepped to extend radially outwardly from a first portion.

Applicants' independent claims 26, 40, and 53 also each recite, in one form or another, *inter alia*, a container having a cylindrical finish with an open end, an external thread including a first end adjacent to the open end and a second end spaced from the open end, and at least one external lug separate from said at least one external thread and projecting radially outwardly from said finish adjacent to and circumferentially spaced from the second end of the thread.

Although Shah discloses holding lugs 15 axially spaced from a second end of a thread, Shah fails to disclose that the holding lugs 15 are circumferentially spaced from the second end. Instead, Shah discloses that the lugs 15, including cam surfaces 14 and stop portions 20 (sic), circumferentially overlap the second end of a corresponding thread.

And neither Akers nor Swartzbaugh cure this deficiency of Shah, because neither Akers nor Swartzbaugh disclose a container having both lugs and threads.

Therefore, the alleged combination of Shah, Swartzbaugh, and Akers does not disclose, teach, or suggest one or more limitations as recited in Applicants' amended independent claims 26, 30, 40, and 53. Thus lacking one or more significant elements of Applicants' claims 26, 30, 40, and 53, the alleged combination(s) cannot possibly yield or render obvious the subject matter of those claims. For at least these reasons, amended independent claims 26, 30, 40, and 53 define patentable subject matter over all cited references.

The remaining application claims are dependent claims, and are allowable both by reason of dependency from the independent claims for reasons set forth in detail above, and because of the additional novel limitations set forth therein.

**Conclusion**

It therefore is believed and respectfully submitted that all claims 26, 28-35, 40-42, 48, 51 and 53 remaining in the application are allowable at this time, and favorable consideration is respectfully requested.

Please charge any fees associated with this submission to Account No. 50-4417 (Rexam Plastic).

Respectfully submitted,

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